

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAMEN D. RABB,  
Plaintiff,

v.

D. CABRERA, et al.,  
Defendants.

No. 1:23-cv-01014-NODJ-BAM (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS REGARDING  
DISMISSAL OF CERTAIN CLAIMS AND  
DEFENDANTS

(ECF No. 12)

Plaintiff Damen D. Rabb is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 29, 2023, the assigned Magistrate Judge screened Plaintiff's first amended complaint and issued findings and recommendations that this action proceed against Defendant Correctional Officer D. Cabrera for failure to protect in violation of the Eighth Amendment. (ECF No. 12.) The Magistrate Judge further recommended that all other claims and defendants be dismissed based on Plaintiff's failure to state claims upon which relief may be granted. (*Id.*) The findings and recommendations were served on Plaintiff and contained notice that any objections were to be filed within fourteen days after service. (*Id.* at 7.) On September 15, 2023, Plaintiff timely filed objections to the findings and recommendations. (ECF No. 13.)

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1 Plaintiff's objections fail to set forth any basis for overturning the findings and  
2 recommendations. Plaintiff alleges in a conclusory fashion that his first amended complaint  
3 sufficiently articulated cognizable claims against the defendants and complied with all procedural  
4 requirements. (*Id.* at 1-2.) However, Plaintiff provides no factual allegations in support of his  
5 assertions, beyond the allegations in the first amended complaint already considered by the  
6 Magistrate Judge.

7 To the extent Plaintiff requests an evidentiary hearing if the Court finds Plaintiff has not  
8 satisfactorily articulated his claims, the request is denied. Plaintiff's request for appointment of  
9 counsel from the federal public defender's office is also denied. Plaintiff does not have a  
10 constitutional right to appointed counsel in this action, *Rand v. Rowland*, 113 F.3d 1520, 1525  
11 (9th Cir. 1997), *rev'd in part on other grounds*, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and the  
12 court cannot require an attorney—from the Federal Defender's Office or a private office—to  
13 represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Moreover, given Plaintiff's ability to  
14 litigate the case thus far, the Court will not at this time seek pro bono counsel through the Court's  
15 pro bono assistance program.

16 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a  
17 de novo review of this case. Having reviewed the file, including Plaintiff's objections, the Court  
18 finds the findings and recommendations to be supported by the record and by proper analysis.

19 Accordingly, IT IS HEREBY ORDERED as follows:

- 20 1. The findings and recommendations issued on August 29, 2023, (ECF No. 12), are  
21 adopted in full;
- 22 2. This action shall proceed on Plaintiff's first amended complaint, filed August 24,  
23 2023, (ECF No. 10), against Defendant Cabrera for failure to protect in violation of  
24 the Eighth Amendment;
- 25 3. All other claims and defendants are dismissed from this action for failure to state  
26 claims upon which relief may be granted; and

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4. This action is referred back to the Magistrate Judge for proceedings consistent with this order.

DATED: January 8, 2024.

  

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CHIEF UNITED STATES DISTRICT JUDGE